defendants on June 24, 1941, filed answers (R. 25–52, 53–64), alleging as a first defense (R. 25–28, 53–56) the validity of the pledge agreement averring in part that "the raisins in said [surplus] pool were held, controlled, and disposed of by the Program Committee in accordance with the provisions of the Agricultural Prorate [Proration] Act of 1933, as amended, and that the relationship of plaintiff and the other depositors to, and the rights and interests in, said stabilization [surplus] pool were those relationships, rights and interests determined and given by said Agricultural Prorate [Proration] Act of 1933, as amended, and by the actions of the Zone, the members of the Program Committee, the Raisin Proration Association, and the directors thereof, relating to said stabilization [surplus] pool raisins" (R. 26, 54). Various affirmative defenses in bar to the action were likewise pleaded by the defendants (R. 28–40, 56–63). On July 24, 1941, petitioner filed separate demurrers to the answers of the Commodity Credit Corporation (R. 65–67) and Raisin Proration Zone No. 1, and other defendants (R. 70–71), and on the same date he filed a motion for judgment on the pleadings (R. 73). On November 26, 1941, the Superior Court of Fresno County, California, issued its order sustaining petitioner's demurrers to defendants' answers, striking the defendants' affirmative defenses, and granting petitioner's

motion for judgment on the pleadings (R. 73–74). Thereafter, the court issued an interlocutory order and decree dated January 22, 1942 (R. 74–77), and on August 7, 1942, it handed down a final judgment and decree adjudging the pledge agreement to have been unauthorized, illegal and void, and appointing a receiver to distribute the proceeds from the sale of Surplus Pool raisins to the contributing growers in accordance with a formula established by the court (R. 87–91).

Upon appeal, the Supreme Court of California entered an opinion (R. 99–120) which reversed the judgment and directed the trial court to enter judgment dismissing the complaint. The opinion proceeded upon the ground that the Zone's authority to enter into the pledge agreement was necessarily implied under the Proration Act "as incidental to the express powers granted to the Proration Program Committee for the effectuation of an adequate marketing plan" (R. 103). Thereafter, on September 15, 1944, the petitioner filed a petition for a rehearing in the Supreme Court (R. 120–125), asserting for the first time in these proceedings that a construction of the Proration Act validating the pledge agreement would deprive petitioner of his property, and deny him the equal protection of the laws, in contravention of the Fourteenth Amendment to the United States Constitution (*cf.* Pet. Br., Appendix, pp. III–XXII). On September 28,

1944, the court entered an order denying the petition for rehearing without opinion (R. 125).

ARGUMENT

Substantial doubt may be expressed whether the record herein establishes that the Court has jurisdiction to review the decision of the California Supreme Court under the provisions of Section 237 (b) of the Judicial Code. Neither in his pleadings nor at any time prior to the filing of his petition for rehearing in the court below did petitioner raise any federal question,[2] nor did the

[2] Petitioner has included in the printed record an "Excerpt from brief for respondent Dickey" (R. 97–98) wherein it is variously stated that "the interpretation [of the Proration Act] contended for by appellants [respondents here] would render this legislation unreasonable and unconstitutional;" that it would "contravene all settled principles of due process," and that it would "render this legislation constitutionally indefensible" (R. 98). Even assuming such excerpt from a state court brief is properly a part of the record before this Court and sufficient in some circumstances to establish its jurisdiction (but see *Live Oak Water Users' Ass'n* v. *Commission*, 269 U. S. 354, 358–359; *Zadig* v. *Baldwin*, 166 U. S. 485, 488; *Harding* v. *Illinois*, 196 U. S. 78, 84), the present excerpt fails to demonstrate that the validity of the Proration Act as here applied was "drawn in question * * * on the ground of its being repugnant to the Constitution" or that "any title, right, privilege or immunity" had been "specially set up or claimed by either party under the Constitution * * *," before the state court so as to establish the jurisdiction of this Court under Section 237 (b) of the Judicial Code. Not only does the excerpt in general fail to contain any specific claims of federal right or reference to any specific section of or amendment to the Constitution (see *Michigan Sugar Co.* v. *Michi-*

Supreme Court of California pass upon or decide any federal question. Since the petition for rehearing was denied without opinion, the record fails completely to afford any jurisdictional basis for an exercise of this Court's supervisory powers. *Live Oak Water Users' Ass'n* v. *Commission*, 269 U. S. 354, 357; *Gelkom Realty Corp.* v. *Young Women's Hebrew Ass'n*, 296 U. S. 537, and cases cited. Petitioner has, however, included as an appendix to his brief a certificate of Phil S. Gibson, Chief Justice of the California Supreme Court (Pet. Br., Appendix, p. I), to the effect that the court passed upon and rejected the contention raised in the petition for rehearing that petitioner was being denied the protection of the Fourteenth Amendment.[3] That certificate does

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gov., 185 U. S. 112, 113–114; *Capital City Dairy Co.* v. *Ohio*, 183 U. S. 238, 248, and cases cited; *Maxwell* v. *Newbold*, 18 How. 511, 516; cf. *York Heating & Ventilating Corp.* v. *Melody*, 296 U. S. 533), but the one reference to a denial of "due process" will be construed to refer solely to the cognate guarantees contained in the California Constitution, Art. I, Sections 1, 13, 14. *Bowe* v. *Scott*, 233 U. S. 658, 664–665; *Gibbes* v. *Zimmerman*, 290 U. S. 326, 328; *Levy* v. *Superior Court of San Francisco*, 167 U. S. 175, 177; see *Agricultural Prorate Commission* v. *Superior Court*, 5 Cal. 2d 559, 572; 55 Pac. 2d 495, 506; cf. *New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, 69. And it will be noted that the citations in the excerpt are to California decisions exclusively.

[3] The petition for rehearing as it appears in the record (R. 120–125) fails to disclose that petitioner adverted to the Fourteenth Amendment. The only language there appearing is that the court's decision presents "a most serious question of constitutionality"—a statement which entirely

not purport to be issued on behalf of the court (cf. *Consolidated Turnpike Co.* v. *Norfolk & Ocean View Ry. Co.*, 228 U. S. 596, 599; see Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States* (1936), p. 128) nor to be part of the record in the instant case. The function of a certificate, when properly incorporated in the record, is to enable this Court to see that the federal question was properly raised and was necessarily determined (*Honeyman* v. *Hanan*, 300 U. S. 14, 18), and it has been held that a certificate of the presiding justice of a state court is insufficient to establish that the court may not have denied the application for rehearing in the mere exercise of its discretion or declined to pass on the claim of unconstitutionality because it was not raised in time.[4] *Fullerton* v. *Texas*, 196 U. S. 192, 194; cf. *Consolidated Turnpike Co.* v. *Norfolk & Ocean View Ry. Co.*, 228 U. S. 596;

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lacks the requisite specificity (see fn. 2, *supra*, pp. 8–9). Reference must be made to the matter appearing in the Appendix to petitioner's brief before it can be determined whether, in his petition for rehearing, petitioner relied upon the federal or state Constitution, and what part thereof.

[4] As to the distinction generally between certificates of this nature of the state court and certificates to the same effect by the presiding judge thereof, see note 1 of the opinion in *Charleston Federal Savings & Loan Ass'n* v. *Alderson*, No. 400, this Term, decided February 26, 1945, and the text therein annotated.

but see *Lisenba* v. *California,* 314 U. S. 219, 221–222, where the certificate was specifically made a part of the record.

If this Court concludes, however, that the federal question was properly raised, we submit that the question lacks substance. The petition for a writ of certiorari filed in the instant case, and particularly the brief in support thereof, consists in large part of attacks upon the reasoning and "assumptions" of the California Supreme Court in holding that the questioned pledge agreement was within the competence of the Program Committee under the state statute, and in dismissing petitioner's complaint upon those grounds. It is axiomatic, however, that the construction of a state statute is peculiarly within the province of the state courts and its interpretation thereof is conclusive. *Knights of Pythias* v. *Meyer,* 265 U. S. 30, 32–33; *Sage Stores Co.* v. *Kansas,* 323 U. S. 32, 35. Accordingly, the only question presented is whether the power granted in a state statute to hypothecate impounded surplus agricultural production—"agricultural waste" in the definition of the Act—for the purpose of stabilizing prices for, and enhancing the marketability of the remainder of the crop constitutes such a radical departure from approved regulation under the police powers of a state as to render the statute

unconstitutional in that respect.[5] We submit that it does not.

In *Parker* v. *Brown,* 317 U. S. 341, in which the Proration Act was sustained against a challenge that its operations unconstitutionally burdened interstate commerce, this Court, in reviewing the underlying conceptions motivating its passage stated (*id.* 363–367):

> Examination of the evidence in this case and of available data of the raisin industry in California, of which we may take judicial notice, leaves no doubt that the evils attending the production and marketing of raisins in that state present a problem local in character and urgently demanding state action for the economic protection of those engaged in one of its important industries. * * *
>
> The history of the industry, at least since 1929, is a record of a continuous search for expedients which would stabilize the marketing of the raisin crop and maintain a price standard which would bring fair return to the producers. * * *
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> * * * * *

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[5] Petitioner's contention (Pet. Br. pp. 15, 19) that the court below violated his rights in ordering a dismissal of the complaint rather than affording him opportunity to attack its "unwarranted assumptions," allegedly based on the Commodity Credit Corporation's answer, in a trial in the Superior Court, is footless. The court held that the complaint failed to state a cause of action (R. 116), and the allegations of the answer accordingly are of no moment.

> This history shows clearly enough that the adoption of legislative measures to prevent the demoralization of the industry by stabilizing the marketing of the raisin crop * * * is a problem whose solution is peculiarly within the province of the state. In the exercise of its power the state has adopted a measure appropriate to the end sought.

While the foregoing statements were made with reference to the commerce clause, identical considerations amply demonstrate that the pledge agreement was legitimately conceived with relation to the evil sought to be alleviated. *Sage Stores Co.* v. *Kansas,* 323 U. S. 32.

The practical effect of the pledge transaction obviously was to prevent a demoralization of the market at harvest time when many growers, to realize upon an investment of months' standing, would have had to dispose of their free tonnages as quickly as possible because of financial necessity. Thus, the Surplus Pool, which in the first instance constituted "agricultural waste" withdrawn from the market to prevent a disastrous glut, was effectively utilized to secure financing which pegged the price of 1938 raisins at not less than $50 per ton.[6] The resultant stabilization of

[6] This figure barely covers the cost of production for the most efficient producer. See *Parker* v. *Brown,* 317 U. S. 341, 364, note 10. Petitioner's statements that the pledge agreement was "unnecessary" would seem specious in view of the fact that growers representing over 50% of the Zone's 1938 raisin production obtained the financing thus made

the market and the approach to a price standard which would bring a fair return to the producers were exactly those ends sought to be achieved by the enactment of the Proration Act. *Parker* v. *Brown,* 317 U. S. 341.

Petitioner does not challenge the constitutionality of the Proration Act generally (cf. Pet. 25), but only the validity of the pledge agreement. Yet under the explicit provisions of the Act (sustained as to its constitutionality in *Agricultural Prorate Commission* v. *Superior Court,* 5 Cal. 2d 550; 55 Pac. 2d 495), petitioner's asserted "property rights" in the impounded surplus raisins are of such nebulous character as to render it doubtful that any disposition of the pool would constitute a substantial deprivation. Cf. *Fox River Paper Co.* v. *R. R. Commission,* 274 U. S. 651. The pool raisins are not to be marketed "in any form which would directly compete with that part of the crop [*i. e.,* the free tonnage] which is regularly certificated," and the program committee for the Zone is specifically authorized to turn over the surplus "to charitable organizations, self-help cooperatives, and similar agencies" under proper safeguards to prevent the surplus from competing

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available, and the fact that on ultimate disposition of the free tonnage raisins upon which loans were made, the Commodity Credit Corporation suffered a large loss (see Statement, *supra,* pp. 4, 5).

with the marketable crop (Proration Act, Section 19.1).[7]

In the light of the public ends served by the pledge of the pool raisins and the insubstantial property right of petitioner therein, petitioner's contention that the hypothecation of the entire pool constitutes, insofar as his share is concerned, an unlawful taking within the meaning of the Fourteenth Amendment would seem to be clearly foreclosed by the decisions of this Court. *Noble State Bank* v. *Haskell,* 219 U. S. 104; *Nebbia* v. *New York,* 291 U. S. 502; *United States* v. *Rock Royal Cooperative, Inc.,* 307 U. S. 533; cf. *United States* v. *Darby,* 312 U. S. 100; *Olsen* v. *Nebraska,* 313 U. S. 236; *Wickard* v. *Filburn,* 317 U. S. 111. Viewed against the background of the industry, graphically described in *Parker* v. *Brown,* as an exercise of power in an emergency period, the decisions in *Home Bldg. & Loan Ass'n* v. *Blaisdell,* 290 U. S. 398, and *Bowles, Administrator* v. *Willingham,* 321 U. S. 503, make the matter even more conclusive.

[7] The pledge agreement provided this protection. Section 4 of the agreement (R. 43) provided that the Commodity Credit Corporation might dispose of the pledged raisins, subject, however, "to the same restrictions as if such raisins were sold or otherwise disposed of by the Committee or the Association." Actually, the pledged raisins were ultimately sold to the Federal Surplus Commodities Corporation for relief distribution. See *Parker* v. *Brown,* 317 U. S. 341, 366.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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